



UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
08/816,079	03/13/97	WIRONEN	J TB-101

GERARD H BENCEN
426 ANDERSON COURT
ORLANDO FL 32801

HM42/0810

EXAMINER

BENSTON JR, W

ART UNIT PAPER NUMBER

1615

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DATE MAILED: 08/10/98

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

☒ Responsive to communication(s) filed on 12-2-97

☐ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire _____ month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-37 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-37 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of Reference Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

Art Unit: 1615

Claims 1 and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In generic claim 1, the phrase “substantially bioabsorbable osteogenic components” is vague, indefinite and confusing as it is not known what is meant by the words “substantially bioabsorbable” and “osteogenic components” as applied to said claim language. A correction is requested.

In claim 12, the phrase “other proteins” is indefinite as it is not known what is mean by the word “other” as it applies to said claim language.

In claim 35, the phrase “otherwise forming is indefinite and should be deleted from said claim language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 1-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuberasampath et al.

Claims read on a bone paste for the repair of non-union fractures implant fixation or any other procedure in which the generation of new bone is necessary.

Kuberasampath et al., teaches an implantable bone composition (col. 1, L. 14-16), which further comprises gelatin (col. 11, L. 50), a powder (col. 11, L. 51), pulverized bone milled to a particular size of 70-850 mm (col. 19, L. 15-16), bovine bone matrix (col. 8, L. 8-11), is biodegradable (col. 4, L. 55), and said composition is lyophilized.

It would have been obvious to one skilled in the art at the time of the invention to use the teachings of Kuberasampath et al., who teaches a bone collagen matrix for implants.

The intended purpose is to provide a bone paste useful in the orthopedic arts.

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner William E. Benston, Jr., whose

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telephone number is (703) 308-4429. The examiner can normally be reached on Monday through Friday from 9:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page, can be reached on (703) 308-2927. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-5408.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.


BENSTON, JR.; aco

July 28, 1998


THURMAN K. PAGE
SUPERVISORY PATENT EXAMINER
ART UNIT 159-1615